IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

State of Raj. Vs. Shera Ram
S.B.CR.LEAVE TO APPEAL NO.253/2006

Against judgment dated 24.05.2006 passed by learned Judicial Magistrate, Balesar, District Jodhpur in Criminal Original Case No.80/98 (State Vs. Shera Ram)

DATE OF ORDER : : 31st August, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

This criminal leave to appeal under Section 378(iii) & (i) Cr.P.C. has been filed by the State against judgment dated 24.05.2006 passed by learned Judicial Magistrate, Balesar, District Jodhpur in Criminal Original Case No.80/98 (State Vs. Shera Ram) whereby the accused respondent has been acquitted of the offence under Section 19/54 of the Excise Act and under Section 3/25 of the Arms Act.

Briefly stated, facts of the case for disposal of the criminal leave to appeal are that on 09.03.1997 SHO Police Station, Balser with police party and motbirs reached to the house of accused Shera Ram at Chamu, opened the house after obtaining key from the accused and in presence of Motbir search was taken. In the house, a cot was lying and on that cot they found 6 bags of plain wine, one cartoon of James Bond whisky and 17 bottles of english wine and also one gun. The articles were seized by the police and the accused was asked about the licence for keeping wine and the gun. He denied having any licence for possessing liquor and the gun.

A case was registered against accused respondent Shera Ram and after completion of investigation, charge-sheet under Section 19/54 of the Excise Act and Section 3/25 of the Arms Act was filed against him. After hearing both the sides, learned trial court framed charge against the accused respondent under Section 19/54 of the Excise Act and under Section 3/25 of the Arms Act.

The accused denied the charge and claimed trial. In support of its case, prosecution examined 13 witnesses and

produced some documents in evidence. After close of the prosecution evidence, in the statement recorded under Section 313 Cr.P.C., the accused respondent denied the prosecution case and claimed himself to be innocent. In defence, no witness was examined. The learned trial court, after hearing learned counsel for the parties, vide its judgment dated 24.05.2006 in Criminal Original Case No.80/98, acquitted accused-respondent of the charge framed against him. Hence, the present criminal leave to appeal has been filed.

Heard learned Public Prosecutor and carefully gone through the material available on record.

The contention of learned Public Prosecutor is that learned trial court has not properly appreciated the eivdence and wrongly disbelieved the evidence of recovery, therefore, the judgment of acquittal passed by the learned trial court is required to be set aside.

I have carefully considered the submissions made before me and perused the impugned judgment and the reasons given in the judgment of acquittal.

Learned trial court found that the evidence in this case was not trustworthy and there were material contradictions in the statements of the witnesses. Learned trial court further found that in relation to the recovery compliance of Section 47 of the Exicse Act was not made for making search of the house of the accused respondent which was mandatory. The learned trial court further found that some of the witnesses were declared hostile and independent witnesses did not support the prosecution story and the evidence regarding ownership of the house was also missing. The learned trial court also did not believe the evidence in relation to recovery of the gun. Learned trial court has discussed the matter in detail at page No.6 of the judgment.

After carefully reading the statements of the witnesses examined before the learned trial court and taking into consideration the fact that the statement of the witnesses are contradictory to each other on material points and there appears no compliance of Section 47 of the Excise Act, which is mandatory provision in relation to recovery, and further in relation to ownership of the house of the accused respondent no evidence is available on record and the learned trial court

has thus acquitted the accused respondnet. In view of above, I am of the opinion that the learned trial court has not committed any illegality in appreciating the evidence brought on record.

The position of law is also settled on the point that the Court while considering the matter where appeals are filed against the order of acquittal then, as a matter of routine interference is not required to be made unless it is found that findings are perverse or the trial Court has misread the evidence.

In view of foregoing discussion, I do not find any illegality in the impugned judgment passed by the learned trial court after appreciating the entire evidence available on record. Hence, the leave to appeal is required to be rejected.

Accordingly, the leave to appeal is rejected.

(SATYA PRAKASH PATHAK), J.

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